

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL HAYS,

Plaintiff,

vs.

HOWARD SKOLNIK, *et al.*,

Defendants.

Case No. 2:10-cv-0331-RCJ-PAL

ORDER

Plaintiff, an inmate proceeding *pro se*, has submitted an Application to Proceed *in Forma Pauperis* and a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983. (#1). The Court has screened the complaint and finds that it must be dismissed.

I. Application to Proceed *in Forma Pauperis*

Based on the financial information provided, the Court finds that Plaintiff shall not be required to pay an initial partial filing fee. However, even if this action is dismissed, the full filing fee of \$350 must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

II. Screening Pursuant to 28 U.S.C. § 1915A

The Court has screened Plaintiff's civil rights complaint pursuant to 28 U.S.C. § 1915A. Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d. 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed

1 by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation
3 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of poverty
4 is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief may be granted,
5 or seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).
6 Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in
7 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under § 1915 when
8 reviewing the adequacy of a complaint or an amended complaint. When a court dismisses a complaint
9 under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
10 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured
11 by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*
13 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a claim
14 is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the claim that would
15 entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
16 determination, the Court takes as true all allegations of material fact stated in the complaint, and the
17 Court construes them in the light most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d
18 955, 957 (9th Cir. 1996). Allegations of a pro se complainant are held to less stringent standards than
19 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404
20 U.S. 519, 520 (1972) (per curiam). While the standard under Rule 12(b)(6) does not require detailed
21 factual allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp.*
22 *v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic recitation of the elements of a cause of action
23 is insufficient. *Id.*, see *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

24 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
25 prisoner's claims lack an arguable basis either in law or in fact. This includes claims based on legal
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1 conclusions that are untenable (e.g., claims against defendants who are immune from suit or claims of
2 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
3 allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28
4 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

5 **III. Screening of the Complaint**

6 Plaintiff sues Howard Skolnik and Brian E. Williams in their official capacities for violation of his
7 due process rights under the Fourteenth Amendment. Plaintiff claims that the defendants failed to give
8 him 540 completion credits as mandated by state law. Plaintiff also claims that the Nevada Department
9 of Corrections does not provide the completion credits to any person pursuant to Nevada law.
10 Application of the credits would reduce the maximum term of his sentence and move up his mandatory
11 parole hearing date. Plaintiff seeks application of 540 mandatory program completion credits toward his
12 sentence.

13 In order to state a cause of action for deprivation of procedural due process, a plaintiff must first
14 establish the existence of a liberty interest for which the protection is sought. In *Sandin v. Connor*, 515
15 U.S. 472, 487 (1995), the Supreme Court abandoned earlier case law which had held that states created
16 protectable liberty interests by way of mandatory language in prison regulations. *Id.* Instead, the Court
17 adopted an approach in which the existence of a liberty interest is determined by focusing on the nature
18 of the deprivation. *Id.* In doing so, the Court held that liberty interests created by prison regulations are
19 limited to freedom from restraint which "imposes atypical and significant hardship on the inmate in
20 relation to the ordinary incidents of prison life." *Id.* at 484.

21 A prisoner has a liberty interest when confinement imposes an "atypical and significant hardship
22 . . . in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. at 484. In *Sandin*, the Court
23 focused on three factors in determining that plaintiff possessed no liberty interest in avoiding disciplinary
24 segregation: (1) disciplinary segregation was essentially the same as discretionary forms of segregation;
25 (2) a comparison between the plaintiff's confinement and conditions in the general population showed
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1 that the plaintiff suffered no “major disruption in his environment;” and (3) the length of the plaintiff’s
2 sentence was not affected. *Sandin*, 515 U.S. at 486-87; *Resnick v. Hayes*, 2000 WL 654114, at *5 (9th
3 Cir., May 22, 2000).

4 A deprivation that affects the duration of a prisoner’s sentence, such as the loss of good time
5 credits may, in some circumstances, implicate due process concerns. *Sandin*, 515 U.S. at 477-78 (citing
6 with approval *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974) (state-created interest in shortened prison
7 sentence is an interest of “real substance”)). Such a liberty interest is limited to circumstances in which
8 time credits were revoked as a disciplinary action; however, such a claim is not cognizable under § 1983
9 unless the result of such disciplinary action has been previously overturned or otherwise invalidated.
10 *Edwards v. Balisok*, 117 S.Ct. 1584, 1587 (1997). Moreover, the act of revoking time credits must be
11 distinguished from the act of limiting a prisoner’s ability to prospectively earn time credits. Prisoners
12 have no liberty interest in earning work time credits or participating in work programs. *Toussaint v.*
13 *McCarthy*, 801 F.2d 1080, 1094-95 (9th Cir. 1986).

14 In the instant case, Plaintiff alleges that he “has actively sought available rehabilitative measures
15 in earnest and has completed multiple ‘Approved Correctional Programs.’” Although the defendants
16 awarded Plaintiff discretionary, meritorious credits for his completion of these programs pursuant to NRS
17 209.449(2), Plaintiff claims that the defendants did not apply “completion credits mandated by NRS
18 209.449(1).” Plaintiff’s liberty interest is limited to circumstances in which time credits were revoked
19 in a disciplinary action, and only then if the disciplinary action was previously overturned or otherwise
20 invalidated. That is not the situation in this case where Plaintiff’s “completion credits” were never applied
21 in the first place. Plaintiff has no liberty interest in participating in “Approved Correctional Programs”
22 and therefore has no liberty interest in earning completion credits so as to reduce his sentence. Therefore,
23 Plaintiff fails to state a claim upon which relief may be granted, and his claim must be dismissed.

24 **IV. Conclusion**

25 Plaintiff’s complaint fails to state a claim against the defendants upon which relief may be granted.
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1 Because the Court finds that Plaintiff cannot prove any set of facts in support of his claims that would
2 entitle him to relief, and amendment would be futile, the complaint will be dismissed with prejudice.

3 **IT IS THEREFORE ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis* (#1)
4 is **GRANTED**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if this
5 action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

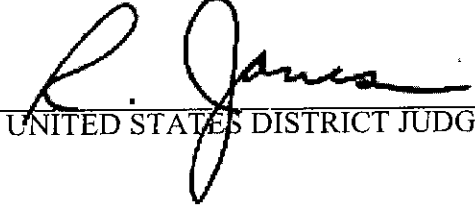
6 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this action to
7 conclusion without the necessity of prepayment of any additional fees or costs or the giving of security
8 therefor. This Order granting *forma pauperis* status shall not extend to the issuance of subpoenas at
9 government expense.

10 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada Department
11 of Corrections shall pay to the Clerk of the United States District Court, District of Nevada, 20% of the
12 preceding month's deposits to Plaintiff's account (inmate #81955), in the months that the account
13 exceeds \$10.00, until the full \$350 filing fee has been paid for this action. The Clerk of the Court shall
14 send a copy of this Order to the Finance Division of the Clerk's Office. The Clerk shall also send a copy
15 of this Order to the attention of the Chief of Inmate Services for the Nevada Department of Corrections,
16 P.O. Box 7011, Carson City, NV 89702.

17 **IT IS FURTHER ORDERED** that the Clerk of the Court shall **FILE** the complaint.

18 **IT IS FURTHER ORDERED** that this action is **DISMISSED with prejudice for failure to**
19 **state a claim upon which relief can be granted.** The Clerk of the Court shall **CLOSE THIS CASE**
20 **and ENTER JUDGMENT ACCORDINGLY.**

21 DATED: 05-24-10.

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23 UNITED STATES DISTRICT JUDGE
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